

**BEFORE THE
MISSOURI BOARD OF PHARMACY
STATE OF MISSOURI**

IN RE:

BMS LOGISTICS, INC.

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Case #2009-004618

**ORDER OF THE MISSOURI BOARD OF PHARMACY
ISSUING BMS LOGISTICS, INC., A DRUG DISTRIBUTOR LICENSE
SUBJECT TO PROBATION**

Comes now the Missouri Board of Pharmacy ("Board") and issues its ORDER granting a PROBATED drug distributor license, license number 2010003575, to BMS Logistics, Inc. ("BMS") pursuant to the provisions of Section 324.038, RSMo. As set forth in Section 324.038, RSMo, BMS may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the Board's decision to issue a probated license to BMS. Such written request must be submitted to the Administrative Hearing Commission within thirty (30) days of issuance of this Order. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman Building Room 640, Jefferson City, MO 65102-1557. If no written request for review is received by the Administrative Hearing Commission within the thirty (30) day period, the right to seek review of the Board's decision shall be waived.

The disciplinary period shall become effective immediately upon issuance of BMS's license as a drug distributor. Should BMS file a written request for review of this Order, the terms and conditions of the Order shall remain in force and effect unless and/or until such time as the Administrative Hearing Commission issues an order contrary to this Order.

FINDINGS OF FACT

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo, for the purpose of executing and enforcing provisions of Chapter 338, RSMo.

2. BMS filed an application with the Board for a drug distributor license on January 19, 2010. The Board issued it a temporary drug distributor license on February

2, 2010. The license issued pursuant to this Order replaces the temporary drug distributor license issued on February 2, 2010. This probated drug distributor license is for the facility owned by BMS at 3601 South Leonard Road, St. Joseph, Missouri, that was inspected by an inspector for the Board on February 2, 2010.

3. BMS operated as a drug distributor at this location since at least June, 2009, without a valid license to do so.

4. The Board sent BMS a Notification of License Requirement letter on July 29, 2009, advising BMS that it was operating as a drug distributor without being licensed to do so at its facility located at 1009 Vernon Road, Wathena, Kansas, and requested that it either become licensed or cease such activities. On August 11, 2009, BMS responded to that letter indicating it would become compliant with the provisions of Chapter 338, but requested until September 15, 2009, to communicate with its customers the need to obtain a drug distributor license.

5. On January 6, 2010, the Board sent BMS a Cease and Desist Warning letter about its unlawful activity, this time regarding the location that is subject to this Order. BMS did not file the application for licensure at this location until January 19, 2010.

6. During an investigation on December 18, 2009, of its facilities at 615 Albemarle Street, St. Joseph, Missouri, the Board's inspector learned that BMS had operated as a drug distributor in Missouri since at least one month prior to that investigation, by shipping legend drugs and items, including, but not limited to, Clindamycin HCL, for which a prescription is required, to other drug distributors, without having a drug distributor license. During December 2009 and January 2010, the Board inspector learned BMS had received medical devices from unlicensed drug distributors, and had continued to ship legend drugs and devices within Missouri without obtaining a drug distributor license from the Board in violation of Chapter 338, RSMo.

7. Based on information received by the Board, pursuant to Section 338.055, RSMo, the Board concluded BMS engaged in conduct which would be grounds for denying BMS a license, or if currently licensed by the Board, disciplinary action by the Board against its drug distributor license.

CONCLUSIONS OF LAW

8. BMS's conduct as alleged above is cause for the Board to deny BMS a drug distributor license pursuant to Section 338.055.1 and .2, RSMo, which states in pertinent parts:

1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

7. Section 324.038, RSMo, provides in pertinent part:

1. Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

9. The Board hereby issues this ORDER in lieu of denial of BMS's request for a drug distributor license in Missouri pursuant to Section 324.038, RSMo.

10. Pursuant to the provisions of Section 324.038, RSMo, the Board hereby issues drug distributor license number 2010003575 to BMS Logistics, Inc. in lieu of denial of BMS's request for a license to practice as a drug distributor in Missouri for its location at 3601 South Leonard Road, St. Joseph, Missouri. License number 2010003575 is issued subject to the terms and conditions set forth below.

ORDER

Based on the foregoing and in lieu of denying BMS, Inc. a drug distributor license, the Board issues BMS a license subject to PROBATION for four (4) years (hereinafter "disciplinary period"). The terms of discipline shall be:

1. BMS shall pay all required fees for licensing to the Board and shall renew its drug distributor license prior to October 31 of each licensing year.

2. BMS shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

3. If, after disciplinary sanctions have been imposed, BMS fails to keep its drug distributor license current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.

4. BMS shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months (due by each January 1 and July 1), beginning with whichever date occurs first after the date of this Order, stating truthfully whether or not it has complied with all terms and conditions of this disciplinary order.

5. BMS shall make a representative of the drug distributor available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. BMS will be notified and given sufficient time to arrange these meetings.

6. BMS's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order.

7. The Missouri Board of Pharmacy will maintain this Order as an open record of the Board as provided in Chapters 324, 338, and 610, RSMo.

8. Upon the expiration of the disciplinary period, BMS's license as a drug distributor shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that BMS has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline BMS's drug distributor license.

9. No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for a hearing before the Board in accordance with provisions of Chapter 536, RSMo.

10. If the Board determines that BMS has violated a term or condition of this Order, which violation would be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

SO ORDERED this 27th day of May, 2010

MISSOURI BOARD OF PHARMACY



KIMBERLY A. GRINSTON
EXECUTIVE DIRECTOR